Supreme Court, U.S.
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No. 94-1377

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

SUN CITY TAXPAYERS' ASSOCIATION,
Petitioner,

v.

CITIZENS UTILITIES COMPANY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JAMES F. STAPLETON
DAY, BERRY & HOWARD
One Canterbury Green
Stamford, CT 06901
(203) 977-7300

JOSEPH E. MAIS
Counsel of Record
LEX J. SMITH
ANTHONY L. MARKS
BROWN & BAIN, P.A.
2901 North Central Avenue
Post Office Box 400
Phoenix, AZ 85001
(602) 351-8000

Counsel for Respondent
Citizens Utilities Company

March 16, 1995

QUESTIONS PRESENTED

1. Do this Court's holdings in *Warth v. Seldin*, 422 U.S. 490 (1975), and *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333 (1977), permit an organization standing to assert damage claims on behalf of its members where the fact and amount of damages would be particular to each member, and would require individualized proof?

2. Does the filed rate doctrine announced in cases such as *Keogh v. Chicago & N.W. Ry.*, 260 U.S. 156 (1922), and *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409 (1986), apply to private civil claims under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964(c)?

Rule 29.1 Statement

Citizens Utilities Company has no parent or subsidiary corporations required to be listed under Rule 29.1 of this Court.

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Respondent, Citizens Utilities Company ("Citizens"), respectfully requests that this Court deny the petition for writ of certiorari filed by petitioner, Sun City Taxpayers' Association ("SCTA").

STATEMENT OF THE CASE

SCTA filed this civil RICO action purportedly on behalf of all "residents of Sun City, Arizona, who purchased utility services" from Citizens' subsidiaries. SCTA alleged that Citizens engaged in RICO violations to procure from the Arizona Corporation Commission (the administrative body that regulates Arizona utilities) higher utility rates than those to which it was entitled under Arizona law. SCTA further alleged that Sun City ratepayers were injured by paying these regulator-approved (but inflated) rates, and demanded damages of three times "the improper utility rates paid by" Sun City ratepayers.

The District Court (then-Chief Judge José A. Cabranes) granted Citizens' motion to dismiss the complaint on two grounds. 847 F. Supp. 281 (D. Conn. 1994). First, relying on this Court's decisions in *Warth v. Seldin*, 422 U.S. 490 (1975), and *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333 (1977), the District Court held that SCTA lacked standing because it did not allege injury to itself, and that it could not bring an action for monetary damages on behalf of its members because "individualized proof would be required both as to whether the member was injured and the extent of any such injury." 847 F. Supp. at 285. Second, the District Court held that SCTA's RICO claims were barred because the filed rate doctrine "prohibits a ratepayer from recovering damages measured by comparing the filed rate and the rate that might have been approved absent the conduct in issue." *Id.* at 287-88.

The Court of Appeals unanimously affirmed the District Court on both grounds. 45 F.3d 58 (2d Cir. 1995).

The Second Circuit disposed of the standing issue as follows:

> [T]he Supreme Court has explained that an organization lacks standing to sue for money damages on behalf of its members if "the damage claims [of the members] are not common to the entire membership, nor shared by all in equal degree," so that "both the fact and extent of injury would require individualized proof." *Warth*, 422 U.S. at 515-16. The district court concluded, and we agree, that SCTA fails the third prong of the *Hunt* test because recovery in this case would require individualized proof by Sun City's residents.

Id. at 61. The Second Circuit also affirmed dismissal of SCTA's RICO claims on the merits, holding that "'[t]he filed rate doctrine bars suits against regulated utilities grounded on the allegation that the rates charged by the utility are unreasonable.'" *Id.* at 62 (quoting *Wegoland Ltd. v. NYNEX Corp.*, 27 F.3d 17, 18 (2d Cir. 1994)).

REASONS FOR DENYING THE WRIT

The Petition does not present any "special and important reasons" justifying a grant of certiorari in this case on either of the two independent grounds upon which the District and Circuit Court dismissed SCTA's complaint. *See* Sup. Ct. R. 10.1 ("A petition for a writ of certiorari will be granted only when there are special and important reasons therefor.").

Since this Court's seminal decision in *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333 (1977), each court to address the issue, including seven circuit courts of appeal, has held that an association lacks standing to seek monetary damages on behalf of its individual members. Of course, without standing, SCTA has no right to pursue its civil RICO claim, thus obviating the need for this Court to consider the application of the filed rate doctrine to such a claim.

In any event, the lower court's conclusion that the filed rate doctrine bars SCTA's RICO claim is supported by clear and consistent authority. This Court has applied the filed rate doctrine to bar ratepayer claims in numerous contexts. *See, e.g.*, *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409, 417, 423-24 (1986) (antitrust); *Arkansas La. Gas Co. v. Hall*, 453 U.S. 571, 584-85 (1981) (breach of contract); *Montana-Dakota Utils. Co. v. Northwestern Pub. Serv. Co.*, 341 U.S. 246, 251-52 (1951) (fraud). Moreover, each of the four circuit courts to address the issue has held that the filed rate doctrine likewise bars a ratepayer's civil RICO claim based on a utility's alleged fraud in the ratemaking process. This Court has denied certiorari from each such decision in which the ratepayer sought certiorari.

In short, SCTA raises no "conflict with the decision of another United States court of appeals." Sup. Ct. R. 10.1(a). Nor can it point to an issue that "has not been, but should be, settled by this Court," and no issue that the Second Circuit "decided . . . in a way that conflicts with applicable decisions of this Court." Sup. Ct. R. 10.1(c). The Court should refuse to employ its discretionary review power because this case "'involves no more than the application of well-settled principles to a familiar situation, and has little significance except for the [parties].'" *Powell v. Nevada*, 114 S. Ct. 1280, 1284 (1994) (Thomas, J., dissenting) (citations omitted).

I. THE COURT OF APPEALS CORRECTLY HELD THAT SCTA LACKED STANDING TO SUE FOR RECOVERY OF MONETARY LOSSES ALLEGEDLY SUSTAINED BY ITS MEMBERS.

SCTA urges (at 6-11) that it has standing to press damage claims on behalf of Sun City residents. In *Hunt*, however, this Court established three requirements that an association must satisfy before it may sue to enforce the rights of its members:

> [A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

432 U.S. at 343.

This Court's decision in *Warth v. Seldin*, 422 U.S. 490 (1975), forecloses SCTA's ability to satisfy the third prong of the *Hunt* test. In *Warth*, a homebuilders association sought to recover, on behalf of its members, $750,000 based on its claim that discriminatory zoning ordinances deprived its members of "'substantial business opportunities and profits.'" *Id.* at 515. Holding that the homebuilders association lacked standing to pursue its members' damage claims, the Court reasoned that "whatever injury may have been suffered is peculiar to the individual member concerned, and both the fact and extent of injury would require individualized proof." *Id.* at 515-16.

The same is true of SCTA's claim here. As the Second Circuit noted, "each resident's injuries during [the relevant] period would differ depending upon the amount of utility services consumed and the uses to which those services were put." 45 F.3d at 61. Because SCTA's complaint seeks damages on behalf of Sun City residents "in an amount equal to the [allegedly] improper utility rates paid" [Compl., Prayer for Relief], *Hunt* and *Warth* preclude standing because both the fact and extent of each ratepayer's alleged injury would require individualized proof.

SCTA nevertheless suggests (at 7-8) that *Warth* is distinguishable because it "was [not] an action for money damages." SCTA ignores that the homebuilders association in *Warth* sought to recover $750,000 in damages.

SCTA's suggestion (at 7) that "[a]ssociational representation . . . makes eminent sense here" because it would "dispense[]" with all the "cumbersome requirements" of a class action is likewise meritless. While SCTA may prefer to ignore those safeguards, the class action formalities exist to ensure that the interests of the multiple parties sought to be bound by a judgment (*i.e.*, both Sun City residents and Citizens) will be protected. This can only be accomplished when a "rigorous analysis" of the prerequisites of Fed. R. Civ. P. 23(a) demonstrates those safeguards have been met. *General Tel. Co. v. Falcon*, 457 U.S. 147, 161 (1982).[1]

Nor is there any validity to SCTA's suggestion (at 10) that "an effective use of judicial resources would permit associational representation as to liability and aggregate damages, and would then have a local court in Arizona determine the distribution of those damages on an application by the SCTA for such determination." As the Second Circuit observed, "there is no contractual or statutory vehicle for the equitable payment of any recovery to all affected Sun City ratepayers." 45 F.3d at 62.

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[1] For example, if an action were allowed to proceed without meeting the class action prerequisites, "the question could arise later whether [plaintiff association] had adequately represented the interests of its members so as to preclude them from bringing suit on their own." *Telecommunications Research & Action Ctr. ex rel. Checknoff v. Allnet Communication Servs., Inc.*, 806 F.2d 1093, 1098 (D.C. Cir. 1986) (Bork, J., concurring). Thus, the prospect of endless litigation arises, "all . . . from this unnecessary circumvention of established class action procedures." *Id.*

II. THE SECOND CIRCUIT'S HOLDING ON THE STANDING ISSUE PRESENTS NO CONFLICT AMONG THE CIRCUITS.

SCTA attempts (at 8-10) to fabricate a conflict among the circuits on the issue of associational standing by citing *Middlewest Motor Freight Bureau v. United States*, 525 F.2d 681 (8th Cir. 1975), and *National Commodity & Barter Ass'n v. Archer*, 31 F.3d 1521 (10th Cir. 1994) ("*NCBA*"). SCTA's effort is unpersuasive: In the eighteen years since this Court decided *Hunt*, every court to address the issue directly—including seven circuit courts of appeal—has held that a request for damages precludes associational standing.[2]

Middlewest was decided before this Court decided *Hunt*, and, as the District Court noted, 847 F. Supp. at 286, it is "a dubious proposition" "that *Middlewest* is still good law," even in the Eighth Circuit. *See Terre Du Lac Ass'n v. Terre Du Lac, Inc.*, 772 F.2d 467, 471 (8th Cir. 1985) (rejecting associational standing because "[a] damages remedy . . . would clearly require individualized proof necessitating the individual participation of the Association members") (citing *Hunt*), *cert. denied*, 475 U.S. 1082 (1986). In any event, *Middlewest*'s unique facts distinguish it from this and all of the other standing cases

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[2] In addition to the Second Circuit in this case, the following federal circuit courts also have denied associational standing to an organization on the basis that a claim to recover damages allegedly sustained by its members or constituents violates the third prong of the *Hunt* test: *New Beckley Mining Corp. v. International Union*, 18 F.3d 1161, 1166 (4th Cir. 1994); *United Union of Roofers v. Insurance Corp. of Am.*, 919 F.2d 1398, 1400 (9th Cir. 1990); *Neighborhood Action Coalition v. City of Canton*, 882 F.2d 1012, 1017 (6th Cir. 1989); *Telecommunications Research & Action Ctr. ex rel. Checknoff v. Allnet Communication Servs., Inc.*, 806 F.2d 1093, 1095 (D.C. Cir. 1986) (R. Ginsburg, J.); *Terre Du Lac Ass'n v. Terre Du Lac, Inc.*, 772 F.2d 467, 471 (8th Cir. 1985), *cert. denied*, 475 U.S. 1082 (1986); *Simer v. Rios*, 661 F.2d 655, 682 n.57 (7th Cir. 1981), *cert. denied*, 456 U.S. 917 (1982); *United Steelworkers of Am. v. University of Alabama*, 599 F.2d 56, 58-59 (5th Cir. 1979).

cited above (at note 2). In *Middlewest*, the defendants challenged the association's standing for the first time on appeal from a final judgment, after the association had been litigating without objection for ten years, and after the statute of limitations had run. Thus, to deny associational standing at that stage would have "disabled" individual claims by the association's members. 525 F.2d at 683 n.4. As the District Court in this case held, "these 'prudential considerations' are [not] present here." 847 F. Supp. at 286.

NCBA—which is not an associational standing case at all—creates no split of authority, either. *NCBA* holds only that an organization may suffer injury to its own First and Fourth Amendment rights if its members are harassed and its records seized. *See* 31 F.3d at 1524 ("'[t]he NCBA can sue only with respect to its own property or rights allegedly infringed'") (citation omitted). The rule in the Tenth Circuit, as elsewhere, is that an association lacks standing to pursue claims on behalf of its members where the claim asserted or relief requested requires participation of the association's individual members. *See Kansas Health Care Ass'n v. Kansas Dep't of Social & Rehab. Servs.*, 958 F.2d 1018, 1021-23 (10th Cir. 1992) (citing *Hunt* and *Warth*).[3]

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[3] SCTA's reliance (at 9-10) on *Standardbred Owners Ass'n v. Roosevelt Raceway Assocs., L.P.*, 985 F.2d 102 (2d Cir. 1993), is also, as the District Court found, "misplaced." *See* 847 F. Supp. at 286. The association in *Standardbred* asserted its civil RICO claim to redress injuries *it* had suffered, not as the representative of its individual members. In any event, the Second Circuit's supposed misapplication of its own precedent is no ground for granting a petition for certiorari.

III. THE COURT OF APPEALS CORRECTLY HELD THAT THE FILED RATE DOCTRINE ARTICULATED BY THIS COURT BARS SCTA'S CLAIMS.

As this Court uniformly has held, the "filed rate doctrine" precludes courts from awarding to ratepayers damages measured by the difference between the rate set by or filed with the proper regulatory agency and the rate that might have been set absent some alleged wrongdoing. *See, e.g.*, *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409, 423-24 (1986); *Arkansas La. Gas Co. v. Hall*, 453 U.S. 571, 584-85 (1981) ("*Hall*"); *Montana-Dakota Utils. Co. v. Northwestern Pub. Serv. Co.*, 341 U.S. 246, 251-52 (1951); *Keogh v. Chicago & N.W. Ry.*, 260 U.S. 156 (1922). This Court consistently has reaffirmed that a plaintiff "can claim no rate as a legal right that is other than the filed rate." *Montana Dakota Utils.*, 341 U.S. at 251. Thus, the Court invariably has rejected claims by ratepayers alleging that they have been injured by paying the filed rate, even if the filed rate resulted from unlawful conduct. As Justice Brandeis explained in *Keogh*:

> Injury implies violation of a legal right. The legal rights of shipper as against carrier in respect to a rate are measured by the published tariff. Unless and until suspended or set aside, this rate is made, for all purposes, the legal rate, as between carrier and shipper.

260 U.S. at 163.

This Court has applied the filed rate doctrine "'whenever tariffs have been filed'" because "[t]he rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the [regulated company]." *Square D*, 476 U.S. at 416-17 & n.19. Thus, the filed rate doctrine has been applied to all ratepayer claims, however denominated, that allege injury based on payment of the filed rate. *See, e.g.*, *Maislin Indus. v. Primary Steel, Inc.*,

497 U.S. 116 (1990) (breach of contract); *Square D*, 476 U.S. at 424 (antitrust); *Montana-Dakota Utils.*, 341 U.S. at 251-52 (fraud). The filed rate doctrine has become an "established guidepost" of the law, *Square D*, 476 U.S. at 423-24, notwithstanding that the doctrine "'is undeniably strict and it obviously may work hardship in some cases,'" *Maislin*, 497 U.S. at 127 (citation omitted).

Two important considerations Justice Brandeis identified in *Keogh* continue to underlie the filed rate doctrine. *First*, allowing courts to redetermine the filed rates of a public utility would substantially usurp agency authority; and *second*, awarding damages to some customers of a regulated industry based on allegedly improper rates those customers paid would frustrate a fundamental objective of agency regulation—rate uniformity. *See Hall*, 453 U.S. at 577-78.

The filed rate doctrine and both of its purposes are directly implicated by SCTA's claim. SCTA's complaint expressly requests damages "in an amount equal to the improper utility rates paid." That method of calculating damages would require the Court to set aside the Arizona Corporation Commission's determinations regarding proper utility rates. *See Hall*, 453 U.S. at 578-79 ("No matter how the ruling of the Louisiana Supreme Court may be characterized . . . it amounts to nothing less than the award of a retroactive rate increase based on speculation about what the Commission might have done had it been faced with the facts of this case."). Furthermore, awarding SCTA damages based on the rates it alleges that the Arizona Corporation Commission should have set would provide SCTA's constituents with what is effectively a preferential rate, in conflict with a fundamental premise of rate regulation—the principle of uniformity. This is because SCTA does not even *purport* to represent the interests of all utility customers in Sun City, Arizona. *See* Compl., ¶ 1 ("plaintiff represents . . . owners of residential real estate in Sun City, Arizona").

The Second Circuit correctly applied the filed rate doctrine here, holding that "RICO claims premised upon alleged fraud perpetrated by utilities upon a rate-setting agency are barred by the filed rate doctrine." 45 F.3d at 62 (citing *Wegoland Ltd. v. NYNEX Corp.*, 27 F.3d 17, 20-22 (2d Cir. 1994)). As the Court explained, "'only by determining what would be a reasonable rate absent the fraud could a court determine the extent of the damages. And it is this judicial determination of a reasonable rate that the filed rate doctrine forbids.'" 45 F.3d at 62 (quoting *Wegoland*, 27 F.3d at 21).

IV. THE LOWER COURT'S APPLICATION OF THE FILED RATE DOCTRINE TO RICO CLAIMS PRESENTS NO CONFLICT AMONG THE CIRCUITS AND IS CONSISTENT WITH THIS COURT'S PRIOR RICO DECISIONS.

The Second Circuit's holding—that the filed rate doctrine bars RICO actions by ratepayers who allege that they are entitled to damages measured by the difference between the actual and "proper" rates because of fraud in the ratemaking process—is consistent with the decision of every circuit court to address the issue. *See Wegoland*, 27 F.3d at 18 (filed rate doctrine bars RICO claim where ratepayer alleged that utility's unregulated subsidiaries sold products and services to its regulated subsidiaries "at inflated prices," which regulated subsidiaries used "to justify inflated rates"); *Taffet v. Southern Co.*, 967 F.2d 1483, 1485 (11th Cir.) (en banc) (filed rate doctrine bars RICO claim premised on allegation that utilities "fraudulently obtained rate increases" "by improperly accounting for purchases of spare parts"), *cert. denied*, 113 S. Ct. 657 (1992); *H.J. Inc. v. Northwestern Bell Tel. Co.*, 954 F.2d 485, 486 (8th Cir.) (filed rate doctrine bars RICO claim based on allegation that "Northwestern Bell bribed members of the Minnesota Public Utilities Commission for the purpose of influencing the officials in setting telephone rates in Minnesota") ("*H.J. II*"), *cert. denied*, 112 S. Ct. 2306 (1992); *Lifschultz Fast Freight, Inc. v.*

Consolidated Freightways Corp., 805 F. Supp. 1277 (D.S.C. 1992), *aff'd mem.*, 998 F.2d 1009 (4th Cir.), *cert. denied*, 114 S. Ct. 553 (1993); *Cullum v. Arkla, Inc.*, 797 F. Supp. 725 (E.D. Ark. 1992), *aff'd mem.*, 994 F.2d 842 (8th Cir. 1993).

SCTA asserts (at 16-17) here, as it did below, that *Wegoland* and *H.J. II* are distinguishable because in both cases the regulatory agencies had taken or were in the process of taking action to redress the damages incurred by the defrauded ratepayers. Neither decision suggests, however, that application of the filed rate doctrine depends on a court's assessment of the "adequacy" of the administrative remedy. To the contrary, courts routinely have dismissed damages suits that challenge the fairness of the filed rates, despite the absence of comparable administrative remedies. *See, e.g.*, *Hall*, 453 U.S. at 578 (applying filed rate doctrine even though the regulatory commission lacked authority to grant retroactive rate relief); *Montana-Dakota Utils.*, 341 U.S. at 254 (similar); *Taffet*, 967 F.2d at 1492 (applying filed rate doctrine even though court explicitly recognized that utility commissions lacked refund power).

SCTA nevertheless asserts (at 11-12) that application of the filed rate doctrine to RICO claims "is impossible to square" with "the intent of Congress in enacting RICO" and "the liberal and broad scope given that statute's remedial civil purposes by this Court." SCTA's argument regarding congressional intent, however, ignores that the only RICO provision that confers a private right of action, 18 U.S.C. § 1964(c), uses exactly the same language as § 4 of the Clayton Act, 15 U.S.C. § 15—the successor to the antitrust provision construed by Justice Brandeis in *Keogh*. Both the RICO and antitrust statutes require that a private plaintiff be "injured in his business or property by reason of" a statutory violation. Thus, SCTA's contention here is no different from that of the government in *Square D*, which contended that the legislative purpose of "promoting competition" provided a

policy basis for displacement of the filed rate doctrine. This Court rejected that assertion, opining that such a "general legislative purpose" was insufficient to override the longstanding *Keogh* doctrine. *Square D*, 476 U.S. at 419-21.

The logic of *Square D* applies fully to RICO cases. When Congress enacted RICO in 1970, it "modeled § 1964(c) on the civil-action provision of the federal antitrust laws" construed in *Keogh*. *Holmes v. Securities Investor Protection Corp.*, 112 S. Ct. 1311, 1317 (1992). As this Court observed in interpreting the meaning of § 1964(c),

> [w]e may fairly credit the 91st Congress, which enacted RICO, with knowing the interpretation federal courts had given the words earlier Congresses had used first in § 7 of the Sherman Act, and later in the Clayton Act's § 4. It used the same words, and we can only assume it intended them to have the same meaning that courts had already given them.

Id. at 1317-18. Thus, Congress must have "intended that this language . . . would be interpreted just as § 4 of the Clayton Act had been." *Taffet*, 967 F.2d at 1494 n.12, 1495 (filed rate doctrine bars RICO claims because "even if the filed rate is obtained through fraud, it remains true that one does not suffer the predicate 'injury to business or property' by paying the filed rate").[4]

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[4] SCTA's observation (at 14) that "anti-trust decisions . . . do not provide a general framework for applying RICO" does not advance its statutory construction argument. While the Court has declined to import into civil RICO antitrust doctrines related to the antitrust violation itself (such as the antitrust injury requirement) or principles unrelated to statutory construction (such as the exclusivity of federal jurisdiction), civil RICO does incorporate antitrust doctrines that inhere in the words "injured in his business or property." *See Holmes*, 112 S. Ct. at 1317-18. One such doctrine is the filed rate doctrine, which *Keogh*, 260 U.S. at 163, expressly grounded upon the "injury"

SCTA's reliance upon this Court's decisions in *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229 (1989) ("*H.J. I*"), and *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985), is also unwarranted. The only issue this Court addressed in *H.J. I* is the conduct required to "meet[ ] RICO's pattern requirement." 492 U.S. at 232. The Court noted that the District Court had relied upon the filed rate doctrine as an independent ground for dismissal of the complaint, but stated that "[t]he Court of Appeals did not consider this issue, and we have no occasion to address it here." 492 U.S. at 234 n.1. Significantly, following remand from this Court, the District Court dismissed the complaint on filed rate doctrine grounds, the Eighth Circuit affirmed, and this Court denied plaintiff's second petition for a writ of certiorari. 734 F. Supp. 879 (D. Minn. 1990), *aff'd*, 954 F.2d 485 (8th Cir.), *cert. denied*, 112 S. Ct. 2306 (1992).

Sedima is relevant only insofar as it confirms that a civil RICO plaintiff "can only recover to the extent that . . . he has been injured in his business or property." 473 U.S. at 496. The filed rate doctrine precludes SCTA from making such a showing here. Equally unhelpful to SCTA is the statute's "liberal construction clause," which, as the Court recently noted, "'only serves as an aid for resolving an ambiguity; it is not to be used to beget one.'" *Reves v. Ernst & Young*, 113 S. Ct. 1163, 1172 (1993) (quoting *Sedima*, 473 U.S. at 492 n.10).[5]

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requirement of § 7 of the Sherman Act (a requirement Congress later engrafted onto § 4 of the Clayton Act). *See Associated Gen. Contractors, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 530, 534 (1983) (discussing legislative history of antitrust statutes' civil-action provision).

[5] SCTA makes two other arguments that are undeserving of this Court's attention. First, SCTA says (at 12, 14 n.6, 17) that the Second Circuit's earlier decision in *County of Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295 (2d Cir. 1990) ("*LILCO*"), is inconsistent with its application of the filed rate doctrine to SCTA's civil RICO claim. The

CONCLUSION

The Second Circuit's unanimous decision is based on its application of two settled (and independent) legal principles to SCTA's complaint. This case presents no novel question, creates no conflict among the circuits and follows from the applicable decisions of this Court. Accordingly, the petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit should be denied.

Respectfully submitted,

JAMES F. STAPLETON
DAY, BERRY & HOWARD
One Canterbury Green
Stamford, Connecticut 06901
(203) 977-7300

JOSEPH E. MAIS
Counsel of Record
LEX J. SMITH
ANTHONY L. MARKS
BROWN & BAIN, P.A.
2901 North Central Avenue
Post Office Box 400
Phoenix, Arizona 85001
(602) 351-8000

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Second Circuit in *Wegoland* expressly rejected an identical argument, 27 F.2d at 22 ("*LILCO* erects no barrier in this Circuit to the application of the filed rate doctrine to RICO suits brought by ratepayers against utilities."). SCTA's assertion that the Second Circuit misconstrued its own decision in *LILCO* (in which it did not even address the filed rate doctrine) presents no issue justifying discretionary review by this Court.

Second, SCTA asserts, on one hand (at 13), that "*Wegoland* will eviscerate RICO," and on the other (at 15), that *Wegoland* is distinguishable from this case. The answer to the first of these inconsistent contentions is that SCTA has no right to seek this Court's review of *Wegoland*, which is an unrelated case. And the claim that the Second Circuit misapplied its own precedent (because *Wegoland* is distinguishable)—an argument SCTA presented unsuccessfully below—likewise fails to justify discretionary review by this Court.